

212508

UNITED STATES OF AMERICA
BEFORE THE
SURFACE TRANSPORTATION BOARD



CF INDUSTRIES, INC.,
Complainant

v.

KANEB PIPE LINE PARTNERS, L.P.,

and

KANEB PIPE LINE OPERATING
PARTNERSHIP, L.P.,
Defendants.

Docket No. NOR 42084

ENTERED
Office of Proceedings

NOV 12 2004

Part of
Public Record

CF INDUSTRIES, INC.'S MOTION FOR APPOINTMENT OF A MEDIATOR

CF Industries, Inc. ("CFI") respectfully requests that the Surface Transportation Board ("Board") appoint a mediator to facilitate a negotiated settlement to this dispute. Mediation will allow CFI and Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively, "Kaneb") to settle this proceeding amicably and expeditiously.

BACKGROUND

In May 2000, following complaints by CFI and Farmland Industries, Inc., the Board prescribed rates from two origin points to numerous destination points on Koch Pipeline Company, L.P.'s ("Koch") ammonia pipeline. In 2002, Kaneb purchased the pipeline from Koch for \$140 million. Soon thereafter, Kaneb attempted to raise the rates above the maximum prescribed rates. CFI filed a complaint against Kaneb, arguing that Kaneb could not raise prescribed rates without a prior Board order. The Board found for CFI, ordered Kaneb to pay

reparations, and set a procedural schedule to permit Kaneb to submit evidence on whether the rate prescription should be lifted.¹

CFI suggested that the parties mediate the dispute. *See* Attachment A. Kaneb refused, stating a preference for direct negotiations. Therefore, on September 24, 2004, the parties asked for, and received, a one week extension of the procedural schedule to allow the parties to negotiate a settlement to the dispute.

CFI and Kaneb reached an agreement in principle. The settlement negotiations broke down, however, because of disputes over implementation details, combined with the expiration of the extension, which required the parties to turn their attention to preparing evidence.

MOTION FOR APPOINTMENT OF MEDIATOR

This case should be settled and mediation is the best path forward to settlement. Following Kaneb's rejection of mediation, the parties negotiated a settlement in principle but were unable to completely resolve the implementation details prior to the filing of evidence. After CFI filed its evidence, CFI contacted Kaneb to express its continued interest in negotiating a settlement, but Kaneb has not responded. This may be because Kaneb is in the process of selling its company to Valero LP, and its key negotiators have been busy with that transaction.

Prompt resolution of this dispute is in both parties' interest. First, the parties were close to an agreement prior to filing their evidence, with only a few implementation issues left unresolved. The parties' differences are bridgeable, and a mediator may help with that process. Second, with Kaneb's pending sale, CFI is concerned that the issues raised in this proceeding

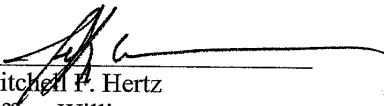
¹ *See CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P., et al.*, STB Docket No. 42084 (August 11, 2004) ("August 11 Order")

may have to be re-litigated in the future (with Valero LP) if this dispute is not resolved soon. This could require the filing of new testimony, more discovery, and a more complicated proceeding. Such a proceeding would unnecessarily consume the Board's attention and result in significant expenses for the parties.

Appointing a mediator is the better option. This option would permit all parties to retain their rights in the event mediation failed; allow for an amicable resolution of the dispute; and, should the mediation prove successful, relieve the Board of the need to resolve such issues as discovery disputes between the parties and the proper investment base to use in this proceeding. Therefore, CFI moves that the Board appoint a mediator to facilitate negotiations between the parties.

Respectfully submitted,

CF Industries, Inc.



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Washington, D.C. 20005
Tel: (202) 879-5270

Counsel for **CF Industries, Inc.**

Dated: November 10, 2004

ATTACHMENT A

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

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Washington, D.C. 20005

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September 20, 2004

VIA FACSIMILE

Pamela J. Anderson, Esq.
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, N.W.
Washington, DC 20007-3877

Re: STB Docket No. 42084
CF Industries v. Kaneb Pipe Line Partners, L.P. and
Kaneb Pipe Line Operating Partnership, L.P.

Dear Ms. Anderson:

I am writing to confirm the offer of CF Industries, Inc. ("CFI") to commence non-binding mediation with Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P. (collectively "Kaneb") in the captioned docket. Specifically, CFI proposes that the parties hold the existing procedural schedule in abeyance, while commencing mediation under the auspices of the Surface Transportation Board ("STB").

If the litigation were to proceed, CFI believes, based on its review of Kaneb's September 13, 2004 filing with the STB, that significant discovery of Kaneb will be required in order for the STB to have an adequate factual record on which to make its decision on whether the prescription should be lifted. This would involve document discovery and probably one or more depositions of Kaneb executives. Therefore, we believe that it would be more effective from the perspective of both CFI and Kaneb to attempt to resolve this matter through mediation.

As CFI has communicated to Kaneb since the outset of this case, CFI strongly prefers to negotiate business solutions with its suppliers rather than litigate with them. With the STB's August 11, 2004 decision, and now the prospect of further litigation between the parties, CFI believes that the parties would benefit from focusing their resources on building a mutually-beneficial business relationship.

Chicago

London

Los Angeles

New York

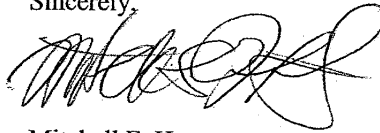
San Francisco

KIRKLAND & ELLIS LLP

Pamela J. Anderson, Esq.
September 20, 2004
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We look forward to receiving Kaneb's response to CFI's mediation offer at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. F. Hertz', with a large, stylized flourish at the end.

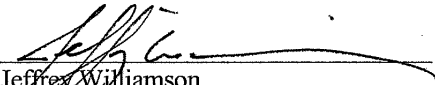
Mitchell F. Hertz

cc: John J. Scott, Esq.

CERTIFICATE OF SERVICE

I certify that I have this day served copies of CF Industries, Inc.'s Motion for Appointment of a Mediator on all parties in this proceeding by hand delivery.

Dated at Washington, DC, this 10th day of November, 2004.


Jeffrey Williamson